Supreme Court, U.S
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No. 05-1403

In the Supreme Court of the United States

JAMES NORBERT GREEN,
Petitioner,

v.

PROVIDENCE MEDICAL CENTER, ET AL.,
Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of the State of Michigan

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED FOR REVIEW

1. Whether this Court has jurisdiction over this Petition for a Writ of Certiorari to the Supreme Court of the State of Michigan when the validity of a treaty or statute of the United States has not been drawn in question and the validity of a statute of any State has not been drawn in question as repugnant to the Constitution?

2. Whether the Michigan Court of Appeals was correct in upholding the trial court's decision to grant summary disposition to Respondents when Respondents were and are statutorily immune from civil suit?

3. Whether Respondents' actions in complying with Michigan law implicated the Fourth Amendment?

4. Whether Respondents are entitled to just damages and double costs for having to respond to this clearly frivolous Petition?

PARTIES TO THE PROCEEDING AND CORPORATE DISCLOSURE STATEMENT RULE 29.6

The only parties in the court below are listed in the caption to the petition. Respondent Providence Hospital and Medical Centers, Inc. is improperly named in the Petition as Providence Medical Center.

Pursuant to Rule 29.6, Providence Hospital and Medical Centers, Inc. ("Providence") makes the following disclosures:

1. Providence is owned by St. John Health.

2. St. John Health is owned by Ascension Health.

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STATEMENT OF APPELLATE JURISDICTION

This Court is without jurisdiction to entertain this Petition for a Writ of Certiorari to the Supreme Court of the State of Michigan. Petitioner has stated in cursory fashion that jurisdiction "flows from Article III of the United States Constitution of 1791 as amended and 28 USC § 1257." (Pet. 1). As will be fully extrapolated in the Argument section of this Brief in Opposition, *infra*, the proceedings below never involved the validity of a treaty or statute of the United States or the validity of a statute of any State, as is required by 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS

28 U.S.C. § 1257. State courts; certiorari

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties of, or any

commission held or authority exercised under, the United States.

(b) For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

42 U.S.C. § 1983. Civil action for deprivation of rights. Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

M.C.L. 257.625a. Arrest without warrant; circumstances; preliminary chemical breath analysis; operator ordered out-of-service; refusal of commercial motor vehicle operator to submit to breath analysis as misdemeanor; provisions applicable to chemical tests and analysis; evidence; availability of test results; admissibility of refusal to submit to chemical test.

Sec. 625a. . . . (6) The following provisions apply with respect to chemical tests and analysis of a person's blood,

urine, or breath, other than preliminary chemical breath analysis:

(a) The amount of alcohol or presence of a controlled substance or both in a driver's blood or urine or the amount of alcohol in a person's breath at the time alleged as shown by chemical analysis of the person's blood, urine, or breath is admissible into evidence in any civil or criminal proceeding and is presumed to be the same as at the time the person operated the vehicle.

* * *

(c) A sample or specimen of urine or breath shall be taken and collected in a reasonable manner. Only a licensed physician, or an individual operating under the delegation of a licensed physician under section 16215 of the public health code, 1978 PA 368, MCL 333.16215, qualified to withdraw blood and acting in a medical environment, may withdraw blood at a peace officer's request to determine the amount of alcohol or presence of a controlled substance or both in the person's blood, as provided in this subsection. Liability for a crime or civil damages predicated on the act of withdrawing or analyzing blood and related procedures does not attach to a licensed physician or individual operating under the delegation of a licensed physician who withdraws or analyzes blood or assists in the withdrawal or analysis in accordance with this act unless the withdrawal or analysis is performed in a negligent manner. . .

M.C.L. 257.625c. Consent to chemical tests; persons not considered to have given consent to withdrawal of blood; administration of tests.

Sec. 625c. (1) A person who operates a vehicle upon a public highway or other public place open to the general public or generally accessible to motor vehicles, including an area designated for the parking of vehicles, within this state is considered to have given consent to chemical tests of his or her blood, breath, or urine for the purpose of determining the amount of alcohol or presence of a controlled substance or both in his or her blood or urine or the amount of alcohol in his or her breath in all of the following circumstances:

(a) If the person is arrested for a violation of section 625(1), (3), (4), (5), (6), (7), or (8), section 625a(5), or section 625m or a local ordinance substantially corresponding to section 625(1), (3), (6), or (8), section 625a(5), or section 625m.

(b) If the person is arrested for felonious driving, negligent homicide, manslaughter, or murder resulting from the operation of a motor vehicle, and the peace officer had reasonable grounds to believe the person was operating the vehicle in violation of section 625.

(2) A person who is afflicted with hemophilia, diabetes, or a condition requiring the use of an anticoagulant under the direction of a physician is not considered to have given consent to the withdrawal of blood.

(3) The tests shall be administered as provided in section 625a(6).

M.C.L. 333.6501. Protective custody; transportation to approved service program or emergency medical service; exception; lawful force; protective steps; individual not under arrest; entry or other record; transfer facility; emergency service unit or staff; transportation by officer; custody; emergency treatment of individual arrested; criminal prosecution and administration of tests.

Sec. 6501. (1) An individual who appears to be incapacitated in a public place shall be taken into protective custody by a law enforcement officer and taken to an approved service program, or to an emergency medical service, or to a transfer facility pursuant to subsection (4) for subsequent transportation to an approved service program or emergency medical service. When requested by a law enforcement officer, an emergency medical service unit or staff shall provide transportation for the individual to an approved service program or an emergency medical service. This subsection shall not apply to an individual who the law enforcement officer reasonably believes will attempt escape or will be unreasonably difficult for staff to control.

(2) A law enforcement officer may take an individual into protective custody with that kind and degree of force which would be lawful were the officer effecting an arrest for a misdemeanor without a warrant. In taking the individual, a law enforcement officer may take reasonable steps to protect himself or herself. The protective steps may include a "pat down" search of the individual in his or her immediate surroundings, but only to the extent necessary to discover and seize any dangerous weapon which may on that occasion be used against the officer or other individuals present. These protective steps shall be taken by the law enforcement officer before an emergency service unit or staff provides

transportation of an individual to an approved service program or emergency medical service.

(3) The taking of an individual to an approved service program, emergency medical service, or transfer facility under subsection (1) is not an arrest, but is a taking into protective custody with or without consent of the individual. The law enforcement officer shall inform the individual that he or she is being held in protective custody and is not under arrest. An entry or other record shall not be made to indicate that the individual was arrested or charged with either a crime or being incapacitated. An entry shall be made indicating the date, time, and place of the taking, but the entry shall not be treated for any purpose as an arrest or criminal record.

(4) An individual taken into protective custody under subsection (1) may be taken to a transfer facility for not more than 8 hours, if there is neither an approved service program nor an emergency medical service in that county and if, due to distance or other circumstances, a law enforcement officer is unable to complete transport of the individual to an approved service program or emergency medical service. The law enforcement officer or agency shall immediately notify and request the nearest approved service program or emergency medical service to provide an emergency service unit or staff as soon as possible to transport the individual to that approved service program or emergency medical service. If neither an emergency service unit nor staff is available for transportation, a law enforcement officer may transport the individual to an approved service program or emergency medical service. If an emergency service unit or staff is to provide transportation, the designated representative of the transfer facility shall assume custody of the individual and shall take all reasonable steps to ensure the individual's health and safety until custody is transferred to the emergency

service unit or staff of an approved service program or emergency medical service.

(5) An individual arrested by a law enforcement officer for the commission of a misdemeanor punishable by imprisonment for not more than 3 months, or by a fine of not more than $500.00, or both, may be taken to an approved service program or an emergency medical service for emergency treatment if the individual appears to be incapacitated at the time of apprehension. This treatment is not in lieu of criminal prosecution of the individual for the offense with which the individual is charged, nor shall it preclude the administration of any tests as provided for by the law.

M.C.L. 333.6502. Examination and testing of individual in protective custody; informing individual of right to test; treatment; transportation.

Sec. 6502. (1) An individual who is taken to an approved service program or emergency medical service pursuant to section 6501(1) shall continue to be in protective custody and shall be examined by a licensed physician or his or her designated representative as soon as possible, but not longer than 8 hours. The licensed physician or designated representative may conduct a chemical test to determine the amount of alcohol in the bloodstream of the individual. The physician or designated representative shall inform the individual of his or her right to such a test and shall conduct a test at the request of the individual.

(2) An individual who, by medical examination, is found to be incapacitated shall then receive treatment from an approved service program or emergency medical service. An individual shall not be denied treatment solely because the individual has

withdrawn from treatment against medical advice on a prior occasion or because the individual has relapsed after earlier treatment. An approved service program or the emergency medical service may arrange for necessary transportation.

(3) Approved service programs shall not be expected to provide treatment other than that for which they are licensed, nor shall an emergency medical service be required to provide treatment other than that routinely provided for other patients treated.

M.C.L. 333.6508. Liability; gross negligence or wilful and wanton misconduct.

Sec. 6508. (1) A law enforcement officer, a member of the emergency service unit, or staff member of an approved service program or an emergency medical service who acts in compliance with this part is acting in the course of his or her official duty and is not criminally or civilly liable therefor.

(2) Subsection (1) does not apply to a law enforcement officer, member of the emergency service unit, or staff member of an approved service program or an emergency medical service who, while acting in compliance with this part, engages in behavior involving gross negligence or wilful and wanton misconduct.

(3) Approved service programs, staff of approved service programs, emergency medical services, staff of emergency medical services, law enforcement officers, and emergency service units shall not be criminally or civilly liable for the subsequent actions of the apparently incapacitated individual who leaves the approved service program or emergency medical service.

U.S. Const. amend. IV. The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

STATEMENT OF THE CASE

Petitioner, as he has done throughout the pendency of this case, has seriously distorted reality and chosen to provide a statement of the case which can be characterized in no other way than pure fantasy. This Petition is but one document in a long line of frivolous, harassing pleadings and papers filed by Petitioner. By way of this Brief in Opposition, Respondents shall provide this Court with the facts of the proceedings below, to wit: a true statement of the case, rather Petitioner's distorted fantasy.

On October 4, 2000, Petitioner drove his automobile in an erratic fashion across the grass of Ford Motor Company's Wixom plant. Petitioner's vehicle had a shredded front tire, its front end was smoking, and grass and weeds were lodged in the frame. (Res. Opp. to Pet. App. to Mich. Sup. Ct., Ex. B, p 67; Pet. Appx. 3a). Security personnel at the Ford plant observed that Petitioner was visibly intoxicated, and, therefore, summoned the Wixom, Michigan Police Department for assistance. (Res. Opp. to Pet. App. to Mich. Sup. Ct., Ex. B, p 73).

Upon arrival, the Wixom Police observed Petitioner near the trunk of his automobile, with a tire iron in his hand. (Res. Opp. to Pet. App. to Mich. Sup. Ct., Ex. C, p 162). Petitioner turned toward the officers, assumed a combative stance, and began shouting obscenities. (Res. Opp. to Pet.

Brief to Mich. Ct. App., Ex. C, p 166). Petitioner appeared to be preparing for a fight, and approached the officers with clenched fists. (Pet. Appx. 15a). After momentarily complying with the officers' requests, Petitioner became totally out of control and began fighting with the officers. (Pet. Appx. 15a). Petitioner was visibly intoxicated, and began pushing, shoving, kicking, screaming, spitting, yelling, and threatening to kill the officers as they attempted to subdue him. (Res. Opp. to Pet. Brief to Mich. Ct. App., Ex. C, p 167). Due to Petitioner's physically and verbally combative behavior, it took five officers and pepper spray to eventually subdue Petitioner. (Res. Opp. to Pet. Brief to Mich. Ct. App., Ex. B, p 21).

The Wixom Police searched Petitioner's vehicle, and found a loaded, unregistered 9mm handgun and an open bottle of Five O' Clock Vodka. (Res. Opp. to Pet. App. to Mich. Sup. Ct., Ex. D). Because of Petitioner's obvious intoxication, his assaultive behavior, and the fact that a chemical irritant was used against him, Wixom Police summoned Community EMS to transport Petitioner to a health care facility for a determination by a physician as to whether Petitioner required immediate medical treatment. (Res. Opp. to Pet. Brief to Mich. Ct. App., Ex. B, p 17-21).

Community EMS transported Petitioner to Respondent Providence Hospital and Medical Center ("Providence") in Novi, Michigan. During the transportation, Petitioner was admittedly thrashing, screaming obscenities, and spitting while trying to break free of the restraints necessary due to his seriously intoxicated state. (Res. Opp. to Pet. Brief to Mich. Ct. App., Ex. C, p 178-179). Upon arrival at Providence, Petitioner was violent, irrational, abusive, and reeked of alcohol. (Res. Opp. to Pet. App. to Mich. Sup. Ct., Ex. A). Petitioner made false assertions that he was an attorney and

his wife was a physician, threatened to kill members of the Wixom Police, EMS workers and hospital personnel, and pleaded with hospital personnel to kill him. (Id). Petitioner was restrained by police due to his irrational, erratic, and violent behavior.

Respondent Dr. March attempted to elicit a medical history from Petitioner to determine if his violent behavior was caused by serious illness, injury, or ingestion of a substance which could cause immediate harm or death. (Res. Opp. to Pet. Brief to Mich. Ct. App., Ex. E, p 13-21). Dr. March also had to determine whether Petitioner could be safely transported to jail or whether Petitioner needed to be admitted to the hospital for immediate treatment. (Id., p 13, 16).

Because the etiology of Petitioner's violent and irrational behavior was unknown, and in an attempt to rule out a serious medical condition, a blood sample was drawn, and a urine sample was obtained via catheterization. The results indicated a blood alcohol level of 0.26. (Res. Opp. to Pet. App. to Mich. Sup. Ct., Ex. A). This was over two and one-half times the legal limit of intoxication in Michigan.

Petitioner was ultimately charged and convicted of carrying a concealed weapon ("CCW"), resisting and obstructing a police officer ("R&O), operating under the influence of intoxicating liquor per se ("OUIL"), possession of a weapon while under the influence of alcohol ("PWWI"), and driving while license suspended ("DWLS"). (Res. Opp. to Pet. Brief to Mich. Ct. App., Ex. F, p 148).

Petitioner appealed his multiple criminal convictions. The Michigan Court of Appeals, in a published decision, affirmed. (Pet. Appx. 14a). Petitioner sought leave to appeal to the

Michigan Supreme Court, which was ultimately denied. Petitioner claims that he sought review from this Court, but "Clayton R. Higgins, Jr. acting for William K. Suter, Clerk of this Court, denied Petitioner access to this Court." (Pet. 8).

In October 2002, Petitioner filed suit against Respondents in the Circuit Court for the County of Oakland, State of Michigan. The Complaint alleged the following: Count I - Negligence; Count II - Assault and Battery, Medical Battery, Rape; Count III - Unauthorized Release of Medical; and Count IV - Conversion and damaged personal property. (Compl.).

As discovery progressed, it became apparent that this lawsuit was just the latest in a long line of attempts by Petitioner to blame everyone but himself for his problems. Petitioner was terminated from his employment with Canadian National Railway for his bizarre and often despicable behavior. For example, on September 13, 2001, Petitioner sent an e-mail to coworkers with video images of the horrific September 11, 2001 attacks and, in addition, the following quote from Nostradamus: "In the City of God there will be a great thunder, two brothers torn apart by chaos, while the fortress endures, the great leader will succumb. The third big war will begin when the big city is burning. On the 11th day of the 9th month that . . . two metal birds would crash into two tall statues . . . in the new city . . . and the world will end soon after." (Res. Opp. to Pet. App. to Mich. Sup. Ct., Ex. H). Petitioner also was repeatedly disciplined for consistently e-mailing his superiors demanding under what authority his employer was withholding federal taxes from his pay. (Id.).

Based upon the fact that Respondents were statutorily immune from suit, Respondents filed a motion for summary disposition. The trial court granted Respondents' motion and dismissed the case with prejudice. The Michigan Court of Appeals, in an unpublished decision, affirmed. (Pet. Appx. 2a). Petitioner sought leave to appeal from the Michigan Supreme Court, which was denied. (Pet. Appx. 1a).

On April 28, 2006, Petitioner filed the instant Petition. For the reasons stated in the Argument section of this Brief in Opposition, *infra*, the Petition should be denied because this Court is without jurisdiction. Furthermore, Respondents should be awarded just damages and double costs for having to respond to this frivolous Petition.

ARGUMENTS AND CITATION OF AUTHORITY

A. This Court is without jurisdiction over this Petition for a Writ of Certiorari

Pursuant to 28 U.S.C. § 1257, this Court has jurisdiction over decisions rendered by the highest court of a State only when "the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States." Before this Court may review a decision of the highest court of a State, it must appear affirmatively from the record not only that a federal question was presented to the highest court of a State having jurisdiction but that its decision of the federal question was necessary for its determination of the case. *Honeyman v. Hanan*, 300 U.S. 14, 57 S. Ct. 350, 81 L. Ed. 476 (1937). This Court has no jurisdiction to review a decision of a State court based upon non-federal

grounds. *Brinkerhoff-Faris Trust & Sav. Co. v. Hill*, 281 U.S. 673, 50 S. Ct. 451, 74 L. Ed. 1107 (1930).

Further, Rule 10 of this Court governs jurisdiction, and provides:

> Review on a writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only for compelling reasons. The following, although neither controlling nor fully measuring the Court's discretion, indicate the character of the reasons the Court considers:
>
> * * *
>
> (b) a state court of last resort has decided an important federal question in a way that conflicts with the decision of another state court of last resort or of a United States court of appeals;
>
> (c) a state court or a United States court of appeals has decided an important question of federal law that has not been, but should be, settled by this Court, or has decided an important federal question in a way that conflicts with relevant decisions of this Court.
>
> A petition for a writ of certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of law.

Even a cursory review of the Petition reveals that no Federal or Constitutional question is asserted. While Petitioner frames his "Questions Presented" in terms of the Fourth Amendment to the United States Constitution, and cites general law applicable to the Fourth Amendment, it is

clear that Petitioner improperly asks this Court to review certain aspects of his criminal case and to resolve some perceived factual discrepancy between his criminal appeal and his civil appeal. For example, in his "Conclusion," Petitioner states:

> Respondent's [sic] claims of immunity and the Trial Courts [sic] findings are not based in fact or law. These two opinions are in direct conflict with each other as well as the holdings of this court [sic], federal law, state law, and precedent. Respondents have admitted negligence, by their failure or refusal to abide by law and their own publicly posted policies. Respondents have admitted assault and battery by their failure to get consent, a warrant or a court order before touching Petitioner. The evidence below is also clear that the Respondent's [sic] released medical records of the Petitioner in violation of the very statute they now seek immunity from. (Pet. 27).

It is clear from reading the Petition that Petitioner is merely asking this Court to overturn both decisions of the Michigan Court of Appeals because Petitioner believes there is a factual inconsistency. Nowhere in the Petition does Petitioner make a cognizable Constitutional argument. Therefore, this Court is without jurisdiction and the Petition should be dismissed.

Moreover, even if the Petition could be read as somehow raising a Federal or a Constitutional question, this Court would nevertheless be without jurisdiction because no Federal or Constitutional question was ever presented to the trial court, the Michigan Court of Appeals or the Michigan Supreme Court.

The following are the "Questions Presented" by Petitioner to the Michigan Court of Appeals:

1. Whether the Statute in question (MCL § 333.6501 et seq.), as interpreted and applied by the Circuit Court is applicable considering the facts and circumstances presented, i.e. did Plaintiff-Appellant appear "to be incapacitated in a public place" (MCL § 333.6501(1)) and was he taken by Police for a determination of capacity pursuant to the statute (MCL § 333.6502(2))? The Circuit Court states: Yes, Plaintiff-Appellant states: No.

2. Whether Plaintiff-Appellant was "under arrest" pursuant to (MCL § 333.6501(5)) or in "protective custody" pursuant to (MCL § 333.6501(1))? The Circuit Court made no response. Plaintiff-Appellant states: Yes to the first, No [sic] to the second.

3. Whether Plaintiff-Appellant was found to be "incapacitated" by Defendants-Appellees? (MCL § 333.6504). The Circuit Court states: Yes, Plaintiff-Appellant states: No.

4. Whether the Statute provides for drug and alcohol testing without some form of consent absent a warrant or court order? (MCL § 333.6502(1)). The Circuit Court states: Yes, Plaintiff-Appellant states: No.

5. Whether the Statute provides for release of Medical Records absent consent or court

order? (MCL § 333.6521). The Circuit Court states: Yes, Plaintiff-Appellant states: No.

6. Whether the Plaintiff-Appellant has the right to "informed consent" with respect to medical treatment or drug and alcohol testing (MCL § 333.6502(1))? The Circuit Court made no response, Plaintiff-Appellant states yes.

7. Whether the Plaintiff-Appellant has the right to refuse medical treatment? The Circuit Court made no response, Plaintiff-Appellant states: Yes.

8. Whether the Trial Court examined the statute in its entirety to determine the Legislative intent before making its ruling? The Circuit Court made no response, Plaintiff-Appellant states: No.

9. Whether the Statute (MCL § 333.6501 et seq.) as interpreted and applied by Trial Court [sic] unconstitutional? The Circuit Court made no response, Plaintiff-Appellant states: No.

10. Whether the failure of Defendant-Appellees [sic] to comply with the Statute constitutes "willful and wanton misconduct" pursuant to MCL § 333.6508(2)? The Circuit Court made no response, Plaintiff-Appellant states: Yes. (Pet. Brief. to Mich. Ct. App.)

Even though Petitioner listed a question presented regarding the constitutionality of M.C.L. 333.6501, Petitioner averred that the statute was indeed constitutional. Moreover,

no argument was actually set forth in Petitioner's Brief that M.C.L. 333.6501 was constitutional.

When Petitioner filed his Application for Leave to Appeal to the Michigan Supreme Court, which was denied, he presented only one question for review: "Was Plaintiff-Appellant under arrest or not under arrest and in protective custody when brought to Defendants-Appellees' establishment October 4, 2000?" (Pet. App. to Mich. Sup. Ct.).

Petitioner was required by this Court's Rules to set forth the time and manner in which the Federal question was asserted. Rule 14(g)(i) provides that a petition for a writ of certiorari must contain:

> If review of a state-court judgment is sought, specification of the stage in the proceedings, both in the court of first instance and in the appellate courts, when the federal questions sought to be reviewed were raised; the method and manner of raising them and the way in which they were passed on by those courts; and pertinent quotations of specific portions of the record or summary thereof, with specific reference to the places in the record where the matter appears (*e. g.*, court opinion, ruling on exception, portion of court's charge and exception thereto, assignment of error), so as to show that the federal question was timely and properly raised and that this Court has jurisdiction to review the judgment on a writ of certiorari. . .

Petitioner failed to comply with this Court's rules. The reason for the noncompliance is simple; Petitioner **never** raised a Federal or Constitutional question. This case is and always has been a frivolous action for assault and battery

under Michigan law. This simply is not an action brought under 42 U.S.C. § 1983, which is the proper method for asserting a Constitutional violation.

Additionally, Petitioner's lengthy discussion of Michigan law as it relates to the disclosure of medical records is irrelevant and does not present a federal question sufficient to give this Court jurisdiction.

Because Petitioner has raised nothing even remotely resembling a Federal or Constitutional question, this Court is without jurisdiction and the Petition should be dismissed.

Even though it is abundantly clear that this Court is without jurisdiction over this Petition, Respondents, for the sake of completeness, shall nevertheless respond to Petitioner's frivolous arguments.

B. The decision of the Michigan Court of Appeals was correct for the reason that Respondents are statutorily immune from suit

Petitioners argument centers on the contention that the panel of the Michigan Court of Appeals in his criminal case held that he was "under arrest," while the panel of the Michigan Court of Appeals in this case held that he was "in protective custody." This Petition is frivolous precisely for the reason that, even if there was a distinction, Respondents are granted statutory immunity from civil suit in both instances.

M.C.L. 333.6501 outlines the procedure to be used when a law enforcement officer seeks to take an incapacitated, i.e., severely intoxicated, person into "protective custody." M.C.L. 333.6501(5) mandates that the same procedure be

used when the individual is arrested for a misdemeanor. M.C.L. 333.6508(1) provides that a "law enforcement officer, a member of the emergency service unit, or staff member of an approved service program or an emergency medical service who acts in compliance with this part is acting in the course of his or her official duty and is not criminally or civilly liable therefor."

M.C.L. 257.625a provides the procedures for obtaining a chemical analysis of the blood and urine of a person who is under arrest for operating a vehicle while intoxicated. M.C.L. 257.625a(6)(c) provides:

> Liability for a crime or civil damages predicated on the act of withdrawing or analyzing blood and related procedures does not attach to a licensed physician or individual operating under the delegation of a licensed physician who withdraws or analyzes blood or assists in the withdrawal or analysis in accordance with this act unless the withdrawal or analysis is performed in a negligent manner.

Therefore, regardless of whether Petitioner was "in protective custody" or "under arrest" for a misdemeanor under M.C.L. 333.6501, or was "under arrest" for OUIL under M.C.L. 257.625a, Respondents are entitled to immunity via M.C.L. 333.6508(1) or M.C.L. 257.625a(6)(c). Moreover, pursuant to M.C.L. 257.625c, Petitioner consented to the chemical tests performed by Respondents.

In *Rudy v. Holmberg*, Unpublished Per Curiam Decision of the Michigan Court of Appeals, No. 214626 (January 18, 2000)(Res. Opp. to Pet. App. to Mich. Sup. Ct., Ex. M), a panel of the Michigan Court of Appeals examined an analogous situation. In *Rudy*, the plaintiff, unconscious as a

result of intoxication, was arrested for operating under the influence of alcohol. The plaintiff was taken to a hospital where blood and urine samples were involuntarily taken. The plaintiff thereafter filed a lawsuit alleging assault and battery against the defendant doctor.

The Michigan Court of Appeals found that the situation was governed by M.C.L. 333.6501. The court stated:

> Under its own terms, MCL 333.6501(5); MSA 14.15(6501)(5) does not require that an arrestee need medical attention, but only requires that an officer takes the arrestee to a facility for medical treatment. However, MCL 333.6502(2); MSA 14.15(6502)(2) indicates when medical attention is necessary for a person brought to a medical facility. That section states in part that "an individual who, by medical examination, is found to be incapacitated shall then receive treatment from an approved service program or emergency medical service." Defendant McNinch and the hospital nurse thought plaintiff needed some initial care to determine whether further treatment was necessary.
>
> Further, this Court previously articulated when medical care is appropriate for an intoxicated person . . . This Court held that a jail official's actions would be deliberately indifferent if he did not obtain medical attention for an intoxicated prisoner exhibiting assaultive, violent behavior.

The court then turned its attention to the plaintiff's argument that the defendants were not entitled to immunity. The court explicitly found that M.C.L. 333.6508 entitled the defendants to immunity.

Likewise, the Michigan Court of Appeals in this case expressly found that M.C.L. 333.6501 controlled. The court stated that "[a]lthough the record does not indicate that police told plaintiff he was being held in protective custody and not under arrest, failure to do so does not automatically transform what happened into an arrest." (Pet. Appx. 6a). The court found that Respondents were entitled to immunity pursuant to M.C.L. 333.6508.

Petitioner spends much time arguing whether an "accident" had actually occurred. Such argument only further demonstrates the frivolous nature of this Petition. Whether or not an "accident" occurred is not, and has never been, an issue in this case. Rather, whether an "accident" occurred was litigated in Petitioner's criminal case. Clearly, Petitioner is improperly attempting to argue aspects of his criminal case before this Court. Nevertheless, the Michigan Court of Appeals, in Petitioner's criminal case, clearly found that an "accident" occurred. *People v Green*, 260 Mich. App. 392, 409; 677 N.W.2d 363 (2004).

Additionally, Petitioner's lengthy discussion of Michigan law as it relates to the disclosure of medical records is irrelevant. The two statutes cited, M.C.L. 257.625a and M.C.L. 333.6508 clearly grant Respondents immunity for any and all civil actions arising out of this incident, including Petitioner's frivolous claim that Respondents improperly released medical records.

For Petitioner to claim that he was and is entitled to maintain an action against Respondents in spite of their statutory immunity is patently frivolous. Surely, if Respondents had not provided necessary medical treatment to Petitioner and Petitioner had sustained injuries, Petitioner would no doubt claim that Respondents would be liable.

Respondents had a duty, when presented with a person exhibiting erratic, violent and bizarre behavior, to determine if the behavior was caused by severe intoxication or a serious medical condition in need of immediate treatment. This is precisely the reason why Michigan law grants immunity to Respondents, and why this Petition is frivolous and should be denied.

C. The decision of the Michigan Court of Appeals was correct because Respondents' actions in no way implicated the Fourth Amendment

Assuming *arguendo* that Petitioner raised a colorable Constitutional claim, even though it is clear that he has not, this Petition should nevertheless be denied because this Court has previously ruled that tests similar to those conducted in this case do not violate the Fourth Amendment.

The Fourth Amendment provides that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . ." *Skinner v. Railway Labor Executives' Assoc.*, 489 U.S. 602, 613, 109 S. Ct. 1402, 1411, 103 L. Ed. 2d 639, 657 (1989). The Amendment guarantees the privacy, dignity, and security of persons against certain arbitrary and invasive acts by officers of the Government or those acting at their direction. *Id.* at 613-14, 109 S. Ct. at 1411, 103 L. Ed. 2d at 657. Before this Court considers whether the tests at issue were reasonable under the Fourth Amendment, the Court must inquire "whether the tests are attributable to the Government or its agents. . . " *Id.* at 614, 109 S. Ct. at 1411, 103 L. Ed. 2d at 657.

The Fourth Amendment does not apply to a search or seizure, even an arbitrary one, effected by a private party. *Id.*

In this case, it is beyond argument that Respondents are private parties. Therefore, the only way in which the Fourth Amendment could apply is if Respondents were acting as instruments or agents of the Government. *Id.*

Respondents were not acting as agents or instruments of the Government; rather, Respondents were acting in a manner common to hospital emergency room personnel faced with a seriously intoxicated patient. Petitioner was brought to the emergency room by Community EMS. Respondents had a professional duty to treat Petitioner to determine if he was suffering from any medical condition other than severe intoxication.

There is no evidence in the record that Respondents were asked to conduct a blood test solely for the purpose of prosecuting Petitioner for OUIL. Rather, the blood and urine tests were taken during the course of Petitioner's medical treatment. "Whether a private party should be deemed an agent or instrument of the Government for Fourth Amendment purposes necessarily turns on the degree of the Government's participation in the private party's activities." *Skinner*, 489 U.S. at 614, 109 S. Ct. at 1411, 103 L. Ed. 2d at 1412. In this case, there is no evidence that the Wixom Police participated in Petitioner's medical treatment; complete discretion as to the best course of treatment was left solely to Respondents. Accordingly, this Petition is frivolous; no violation of the Fourth Amendment can be asserted.

Even if Respondents could somehow be considered agents or instruments of the Government (though they clearly are not), the Fourth Amendment would nevertheless be inapplicable. In *Schmerber v. California*, 384 U.S. 757, 86 S. Ct. 1826, 16 L. Ed. 2d 908 (1966), this Court held that a State could direct that a blood sample be withdrawn from a

motorist suspected of driving while intoxicated, despite his refusal to consent to the intrusion. In *Skinner*, *supra*, this Court reiterated the holding of *Schmerber*:

> We noted that the test was performed in a reasonable manner, as the motorist's "blood was taken by a physician in a hospital environment according to accepted medical practices." [Citation omitted]. We said also that the intrusion occasioned by a blood test is not significant, since such "tests are a commonplace in these days of periodic physical examinations and experience with them teaches that the quantity of blood extracted is minimal, and that for most people the procedure involves virtually no risk, trauma, or pain." [Citation omitted]. *Schmerber* thus confirmed "society's judgment that blood tests do not constitute an unduly extensive imposition on an individual's privacy an bodily integrity."

489 U.S. at 625, 109 S. Ct. at 1417, 103 L. Ed. 2d at 665.

Therefore, this Court has already determined the issue - the type of tests performed in this case do not violate the Fourth Amendment.

Petitioner has not asserted a Constitutional claim. A review of the Petition reveals a confusing and unclear assertion of the argument that the decisions of the Michigan Court of Appeals in Petitioner's criminal case and civil case are inconsistent. While Petitioner cites general language regarding the Fourth Amendment, Petitioner fails to explain how Respondents' conduct relates thereto. "The failure of a petitioner to present with accuracy, brevity, and clarity whatever is essential to ready and adequate understanding of

the points requiring consideration is sufficient reason for the Court to deny a petition." Rule 14(4).

Even if Petitioner had skillfully asserted a Constitutional claim, which he has not, as described above, Respondents' conduct in no way implicated or violated the Fourth Amendment. Accordingly, this Petition should be denied.

D. This Petition is frivolous, and is aimed only at harassing Respondents; therefore, Respondents are entitled to damages and double costs

Rule 42 provides, *inter alia*:

> When a petition for a writ of certiorari, an appeal, or an application for other relief is frivolous, the Court may award the respondent or appellee just damages, and single or double costs under Rule 43. Damages or costs may be awarded against the petitioner, appellant, or applicant, against the party's counsel, or against both party and counsel.

Rule 42(2). Rule 43(7) provides that "[i]n extraordinary circumstances the Court may adjudge double costs."

As demonstrated in Argument Sections A-C above, this Petition clearly is frivolous. Since the inception of this lawsuit, Petitioner's aim seems to be harassment of Respondents, who unquestionably followed established procedure and Michigan law in treating Petitioner. Respondents have been forced to expend considerable resources defending this frivolous case at the trial court level, the Michigan Court of Appeals, the Michigan Supreme Court, and now, amazingly, this Court.

The undisputed fact is that Petitioner has **never** raised *anything even remotely resembling a Federal question.* This case has always been about Petitioner's desire to receive money damages for the claimed "assault." Now, after "striking out" at all levels of the Michigan court system, Petitioner has conjured up some imaginary Federal question. Yet, reviewing the Petition reveals that Petitioner has not even properly made a Federal question argument. Rather, Petitioner quotes some boilerplate Fourth Amendment law and continues to assert the same frivolous, factual arguments that were rejected at all levels of the Michigan courts.

Additionally, apparently believing that he was "denied access to this Court," Petitioner boldly asserts arguments which clearly only concern his criminal case. For example, Petitioner spends much time arguing whether or not an "accident" occurred. Whether or not an "accident" occurred was and has never been an issue in this case; rather, it was an issue decided by the Michigan Court of Appeals in Petitioner's criminal case. (Pet. Appx. 30a).

Petitioner has filed this Petition in violation of 28 U.S.C. § 1257, and this Court's Rules. It is patently obvious that this Court is without jurisdiction over this Petition. Moreover, Petitioner failed "to present with accuracy, brevity, and clarity whatever is essential to ready and adequate understanding of the points requiring consideration" in violation of Rule 14(4). Petitioner also violated Rule 12(3) by failing "to notify all respondents promptly, on a form suppled by the Clerk, of the date of filing, the date the case was placed on the docket, and the docket number of the case." Luckily, Respondents were able to adduce this information via this Court's web site.

Therefore, because this Petition is just the latest in a long line of frivolous, harassing pleadings, Respondents should be awarded just damages, including reasonable attorney fees, and double costs for having to defend this clearly frivolous Petition.

CONCLUSION AND PRAYER FOR RELIEF

For the reasons stated above, Respondents request that this Honorable Court deny this Petition for a Writ of Certiorari to the Supreme Court of the State of Michigan, as this Court is without jurisdiction. Additionally, Respondents request that this Court award them just damages, including reasonable attorney fees, and double costs for having to defend this clearly frivolous Petition.

Respectfully submitted,

Dated: May 31, 2006

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